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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

**PUBLIC COPY**



H6

DATE: **JAN 25 2012**

OFFICE: MEXICO CITY, MEXICO

File:

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Mexico City, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse and U.S. citizen children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated September 18, 2009.

On appeal, the applicant's spouse asserts extreme hardship of an economic, familial, and emotional nature if the waiver is not granted. See *Hardship Letter 2*, dated October 26, 2009.

The record contains but is not limited to: Form I-601 and denial letter; two hardship letters from the applicant's spouse; physician's letter; letters from two of the applicant's daughters; multiple character reference letters and letters of concern for the family; employment-related letters; pay stubs; bank overdraft notices; billing statements; and Form I-130. The record also contains a handwritten Spanish language letter from the applicant's spouse which was not accompanied by a full certified English translation as required pursuant to 8 C.F.R. § 103.2(b)(3).<sup>1</sup> Because the applicant failed to submit the required translation, the AAO cannot determine whether the evidence supports the applicant's claims. *Id.* Accordingly, the Spanish language evidence is not probative and will not be accorded any weight in this proceeding. The entire record, with the exception of the applicant's spouse's Spanish language letter, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

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<sup>1</sup> 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- ...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection in or about January 1993 and remained until June 11, 2008 when she voluntarily departed to Mexico. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until June 11, 2008, a period in excess of one year. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her June 2008 departure she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to the qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries;

the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the record reflects that the applicant's spouse is a 46-year-old native and citizen of Mexico and lawful permanent resident of the United States. Asserting economic hardship, the applicant's spouse states that a reduction in his weekly work hours from 40 to 32 "in the last 4 or 5 months," has resulted in an "extreme economic situation." See *Hardship Letter 2*, dated October 26, 2009. A *Letter from* [REDACTED], dated October 14, 2009, asserts that the applicant "started having some financial difficulty" about a year ago resulting in his "having to get advancements" on his paychecks. [REDACTED] lists six dates between December 23, 2008 and October 14, 2009 on which she asserts the applicant's spouse received advances. *Id.* The applicant's spouse states that he cannot buy food for his two children in the U.S. and his wife and child in Mexico. See *Hardship Letter 2*, dated October 26, 2009. He states that the \$150 he sends to Mexico every other week pays only for his spouse and daughter's food and utilities, and he cannot afford to send his daughter to school there. *Id.* *Western Union Transfer Receipts*, various dates, showing transfers of \$150 from the applicant to the applicant's spouse, have been submitted in support.

The applicant's spouse states: "It is important that my wife return home to us so that she may begin to work so that our family can get ahead." See *Hardship Letter 2*, dated October 26, 2009. The record contains no documentary evidence showing the combined income of the couple before the applicant departed to Mexico or applicant's past or prospective future earnings. With regard to expenses, partial billing statements have been submitted for a personal loan, credit card, and telephone service. See *Partial Billing Statements*, various dates. While the statements are incomplete, it appears that only one account has a past due balance, in the amount of \$58.17. See *AT&T Statement*, dated August 19, 2009. Three *International Bank of Commerce Statements*, for the same account, dated June, September, and October 2009, show an overdraft balance of an average of \$287. And a *Letter From* [REDACTED], dated September 17, 2009, asserts "Your child's laptop will not be issued until the amount due has been paid or a scheduled payment has begun." The "charge" listed is \$250 for a "broken display." *Id.* While these documents are helpful in showing some of the applicant's spouse's expenses, they paint an incomplete picture as to the entirety of the household income versus expenses related to separation from the applicant. The applicant's spouse stated in an earlier letter that he has hardship raising his daughters alone, having to pay childcare and leave work early to pick them up from school. See *Hardship Letter 1*, undated. The AAO recognizes that the applicant's spouse has taken on an added financial burden by sending support to Mexico for his wife and daughter in addition to his expenses at home. The difficulties described, though not insignificant, do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member.

In a *Physician's Letter*, dated October 26, 2009, [REDACTED] asserts that the applicant's spouse presented with a complaint of depression. [REDACTED] asserts that the applicant's spouse is "very depressed, missing wife and daughter." *Id.* [REDACTED] asserts: "The symptoms have been associated with alcoholism (sober for 1 year), difficulty sleeping and recent changes in life," and lists under "Family History," alcoholism and diabetes. *Id.* Under "Psychiatric," [REDACTED] asserts: "Present- Anxiety, Change in Sleep Pattern, Depression and Mood changes," while under "Mental Status," he asserts "Alert," and under

“General Appearance,” “Not in acute distress.” *Id.* Under “Assessment & Plan,” [REDACTED] asserts: “Depression (311) appears situational, will improve if family is united,” and he prescribes 50 milligrams of Pristiq daily, no refill, and a follow-up in 4 weeks.” *Id.* The AAO has considered [REDACTED] letter, but the evidence in the record is insufficient to establish that the applicant’s spouse’s emotional or psychiatric difficulties go beyond that which is normally experienced by family members of inadmissible aliens.

The applicant’s spouse states that he is highly worried by the violence in Mexico and lack of stable security. See *Hardship Letter 2*, dated October 26, 2009. The record contains no documentary evidence addressing country conditions in Mexico.

Assertions have been made concerning the applicant’s children. Congress did not include hardship to the applicant’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act, except as it may affect the qualifying relative – here the applicant’s spouse. The applicant’s spouse stated in his initial hardship letter that the applicant is greatly needed at home by his daughters and himself and the family is incomplete without her. See *Hardship Letter 1*, undated. The AAO recognizes that the applicant’s teenage daughters have experienced difficulties related to separation from their mother. However, the AAO cannot find that the difficulties described are uncommon or extreme to such a degree that they cause significant hardship to the applicant’s spouse.

The AAO acknowledges that separation from the applicant has caused various difficulties for the applicant’s spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The Field Office Director noted in the I-601 denial letter, that the applicant failed to address relocation-related hardship(s). See *Decision of the Field Office Director*, dated September 18, 2009. Again on appeal, the applicant’s spouse does not address the possibility of relocating to Mexico and makes no assertions of hardship related thereto. He states that he worries about violence and a lack of stable security in Mexico. See *Applicant’s Hardship Letter 2*, dated October 26, 2009. While the statement was not made in the context of relocation, the AAO has considered it in this regard but finds no documentary evidence in the record concerning country conditions in Mexico. As no other relocation-related hardships are asserted on appeal, the AAO is unable to find that the applicant’s spouse would suffer extreme hardship were he to choose to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.